

SETTLEMENT AGREEMENT
BETWEEN
MISSOURI REAL ESTATE COMMISSION
AND
JEFFREY MARQUIE

Jeffrey Marquie (Marquie) and the Missouri Real Estate Commission (MREC) enter into this Settlement Agreement for the purpose of resolving the question of whether Marquie's license as a real estate broker, no. 2003026320, will be subject to discipline. Pursuant to § 536.060, RSMo 2000,¹ the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri and, additionally, the right to a disciplinary hearing before the MREC under § 621.110, RSMo Supp. 2013. The MREC and Marquie jointly stipulate and agree that a final disposition of this matter may be effectuated as described below pursuant to § 621.045, RSMo Supp. 2013.

¹ All statutory citations are to the 2000 Revised Statutes of Missouri unless otherwise noted.

Marquie acknowledges that he understands the various rights and privileges afforded him by law, including the right to a hearing of the charges against him; the right to appear and be represented by legal counsel; the right to have all charges proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing against him at the hearing; the right to present evidence on his behalf at the hearing; the right to a decision upon the record of the hearing by a fair and impartial administrative hearing commissioner concerning the charges pending against him; the right to a ruling on questions of law by the Administrative Hearing Commission; the right to a disciplinary hearing before the MREC at which time Marquie may present evidence in mitigation of discipline; the right to a claim for attorney fees and expenses; and the right to obtain judicial review of the decisions of the Administrative Hearing Commission and the MREC.

Being aware of these rights provided to him by law, Marquie knowingly and voluntarily waives each and every one of these rights and freely enters into this Settlement Agreement and agrees to abide by the terms of this document as they pertain to him.

Marquie acknowledges that he has received a copy of documents that were the basis upon which the MREC determined there was cause for discipline, along with citations to law and/or regulations the MREC believes were violated.

Marquie stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the MREC that Marquie's license as a real estate broker, license no. 2003026320, is subject to disciplinary action by the MREC in accordance with the relevant provisions of Chapter 621, RSMo, and §§ 339.010-339.205 and §§ 339.710-339.855, RSMo, as amended.

The parties stipulate and agree that the disciplinary order agreed to by the MREC and Marquie in Part II herein is based only on the agreement set out in Part I herein. Marquie understands that the MREC may take further disciplinary action against him based on facts or conduct not specifically mentioned in this document that are either now known to the MREC or may be discovered.

I.

Joint Stipulation of Facts and Conclusions of Law

Based upon the foregoing, the MREC and Marquie herein jointly stipulate to the following:

1. The MREC is an agency of the State of Missouri created and existing pursuant to § 339.120, RSMo Supp. 2013, for the purpose of executing and enforcing the provisions of §§ 339.010 to 339.205 and §§ 339.710 to 339.855, RSMo (as amended), relating to real estate salespersons and brokers.

2. Marquie is licensed by the MREC as a real estate broker, license no. 2003026320. Marquie's license was current and active at all times relevant herein.

3. Marquie operates his real estate business under the registered fictitious name "JM Realty."

4. The MREC conducted two audits and examinations of Marquie's business records and escrow accounts, with the first audit occurring in December 2012, and the second audit occurring in April and May 2014.

5. At the time of the first audit, Marquie maintained one (1) property management escrow account, Commerce Bank Account No. xxxxx7424 ("PM 7424").

6. At the time of the second audit, Marquie maintained two (2) property management escrow accounts: Commerce Bank Account No. xxxxx1782 ("PM 1782") and Commerce Bank Account No. xxxxx1783 ("PM 1783"). PM 1782 was designated for security deposits, and PM 1783 was the designated reserves account.

Applicable Statutes and Regulations

7. Section 339.100.2, RSMo, regarding the MREC's cause for complaints, states:

2. The commission may cause a complaint to be filed with the administrative hearing commission as provided by the provisions of chapter 621 against any person or entity licensed under this chapter or any licensee who has failed to renew or has surrendered his or her individual or entity license for any one or any combination of the following acts:

(1) Failure to maintain and deposit in a special account, separate and apart from his or her personal or other business accounts, all moneys belonging to others entrusted to him or her while acting as a real estate broker or as the temporary custodian of the funds of others, until the transaction involved is consummated or terminated, unless all parties having an interest in the funds have agreed otherwise in writing;

...

(15) Violation of, or attempting to violate, directly or indirectly, or assisting or enabling any person to violate, any provision of sections 339.010 to 339.180 and sections 339.710 to 339.860, or of any lawful rule adopted pursuant to sections 339.010 to 339.180 and sections 339.710 to 339.860;

(16) Committing any act which would otherwise be grounds for the commission to refuse to issue a license under section 339.040[.]

8. Section 339.105, RSMo Supp. 2013, regarding escrow bank accounts, states:

1. Each broker who holds funds belonging to another shall maintain such funds in a separate bank account in a financial institution which shall be designated an escrow or trust account. This requirement includes funds in which he or she may have some future interest or claim. Such funds shall be deposited promptly unless

all parties having an interest in the funds have agreed otherwise in writing. No broker shall commingle his or her personal funds or other funds in this account with the exception that a broker may deposit and keep a sum not to exceed one thousand dollars in the account from his or her personal funds, which sum shall be specifically identified and deposited to cover service charges related to the account.

...

3. In conjunction with each escrow or trust account a broker shall maintain books, records, contracts and other necessary documents so that the adequacy of said account may be determined at any time. The account and other records shall be provided to the commission and its duly authorized agents for inspection at all times during regular business hours at the broker's usual place of business.

9. 20 CSR 2250-8.220 regarding escrow bank accounts,

states:

1) A broker shall establish and maintain a separate escrow account(s), to be designated as a property management escrow account(s), for the deposit of current rents and money received from the owners or on the owner's(s') behalf for payment of expenses related to property management. Before making disbursements from a property management escrow account, a broker shall ensure that the account balance for that owner's(s') property(ies) is sufficient to cover the disbursements.

...

6) Fees or commissions payable to a broker must be withdrawn from a property management escrow account at least once a month unless otherwise agreed in writing. Any rent paid in advance as a deposit for the last month's rent or as rent other than the current month's rent held by a broker shall be deposited in the property management escrow account unless otherwise agreed to in writing.

10. Section 339.780.3, RSMo, regarding brokerage services and client authorization, states:

3. Before or while engaging in any acts enumerated in section 339.010, except ministerial acts defined in section 339.710, a designated broker acting as a single agent for a buyer or tenant shall enter into a written agency agreement with the buyer or tenant. The agreement shall include a licensee's duties and responsibilities specified in section 339.740 and the terms of compensation.

Audit Violations

Violations Discovered during Marquie's First Audit

11. From December 17–19, 2012, the MREC conducted an audit and examination, Audit No. DT-413164, of Marquie's business records and escrow accounts.

12. On several occasions, Marquie disbursed funds from the property management escrow account, PM 7424, when the owners' account balances were insufficient to cover the disbursements, including, but not limited to:

- i. Owner Pacaccio's balance was negative \$110.51 on November 28, 2012.
- ii. Owner Baylor's balance was negative \$4.60 on November 21, 2011, and negative \$513.26 on May 29, 2012.
- iii. Owner Mohammed's balance was negative \$145.05 on March 2, 2012.
- iv. Owner Gerreinr's balance was negative \$665.45 on January 31, 2012, and negative \$308.72 on February 29, 2012.
- v. Owner Anderson's balance was negative \$439.26 on January 31, 2012, negative \$1,498.00 on September 12, 2012, and negative \$346.00 on October 2, 2012.
- vi. Owner Koch's balance was negative \$324.25 on April 27, 2012.
- vii. Owner Anthony's balance was negative \$448.90 on September 2, 2012.

13. Marquie violated § 339.105.1, RSMo, and 20 CSR 2250-8.220(1) by overspending the owners' funds in the property management escrow account.

14. On several instances between September 1, 2012, and November 30, 2012, Marquie commingled the funds of others in the broker's operating account. The instances consist of depositing and maintaining rents from

managed properties in the broker's operating account, paying owner proceeds from the broker's operating account, and paying owner expenses out of the broker's operating account.

15. The commingling of owners' funds with brokerage funds is a violation of § 339.105.1, RSMo.

16. On or about January 30, 2012, Marquie acted as an agent for the buyer, Mehta, in executing the sale from the seller, National Residential Nominee Services, of certain property located at 300 Holloway, Ballwin, Missouri. There was, however, no written agreement establishing the buyer-agent relationship between Marquie and the buyer, Mehta, in violation of § 339.780.3, RSMo.

17. Based on Marquie's conduct, regarding the first audit, cause exists to discipline his real estate broker's license pursuant to § 339.100.2(1) and (15).

Violations Discovered during Marquie's Second Audit

18. On April 22–23, 2014, May 6–7, 2014, and May 12, 2014, the MREC conducted a second audit and examination, Audit No. LB-814373, of Marquie's business records and escrow accounts for the dates ranging from April 30, 2013, to March 31, 2014.

19. As of March 31, 2014, Marquie's property management escrow account, PM 1783, had a net overage of \$10,961.06, in violation of §§ 339.105.1

and .3, RSMo. The second audit of the property management escrow account, PM 1783, revealed the following:

- i. The property management escrow account, PM 1783, contained management and other fees belonging to Marquie that remained in the account and had not been timely removed, which constituted an identified overage of \$7,872.62.
- ii. Identified shortages totaling \$2,103.82, including a withdrawal booked for a different amount than amount shown on broker check register (\$1.45), bank fees removed in excess of the funds held in the account (\$185.05), booked rent from Gullen that was not deposited (\$1,125.00), and a negative owner (McCoy) balance (\$792.32).
- iii. After reconciling the identified overages and shortages, the property management escrow account, PM 1783, contained a net unidentified overage of \$5,192.62.

20. In at least two (2) instances, Marquie paid property expenses out of the property management escrow account, PM 1783, but the reimbursement funds were left in the security deposit account. This commingling of funds

created overages of \$766.73 and \$237.00 in the security deposit account, PM 1782.

21. Marquie also commingled funds by depositing leasing commissions and rents for broker-owned vacation rentals in the property management escrow account, PM 1783.

22. By commingling of funds, Marquie violated § 339.105.1, RSMo.

23. On at least two (2) occasions between February 12, 2014, and March 26, 2014, Marquie disbursed funds from the property management escrow account, PM 1783, when the owners' account balances were insufficient to cover the disbursements, in violation of 20 CSR 2250-8.220(1).

24. Between January and March 2014, Marquie charged management fees totaling \$889.89 but failed on numerous occasions to remove the fees from the property management escrow account, PM 1783, as follows:

- i. \$102.24 from owner Chang;
- ii. \$192.00 from owner Eller;
- iii. \$245.40 from owner Breitung;
- iv. \$198.00 from owner Bollman; and
- v. \$162.26 from owner Luna.

25. Marquie's failures to remove management fees on a monthly basis are violations of 20 CSR 2250-8.220(6).

26. Based on Marquie's conduct, regarding his second audit, cause exists to discipline his real estate broker's license pursuant to § 339.100.2(1) and (15).

27. Based on facts alleged above regarding both audits, Marquie has engaged in conduct that would be grounds for the MREC to refuse to issue a license under § 339.040, RSMo, providing cause to discipline his license pursuant to § 339.100.2(16), RSMo.

II. Joint Agreed Disciplinary Order

Based on the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the MREC in this matter under the authority of § 536.060, RSMo, and §§ 621.045.4 and 621.110, RSMo Supp. 2013.

28. **Marquie's license is on probation.** Marquie's license as a real estate broker is hereby placed on PROBATION for a period of THREE YEARS. The period of probation shall constitute the "disciplinary period." During the disciplinary period, Marquie shall be entitled to practice as a real estate broker under §§ 339.010 through 339.205 and §§ 339.710 through 339.855, RSMo, as amended, provided Marquie adheres to all the terms of this agreement.

29. **Terms and conditions of the disciplinary period.** The terms and conditions of the disciplinary period are as follows:

A. Marquie shall keep the MREC apprised at all times of his current address and telephone number at each place of residence and business. Marquie shall notify the MREC in writing within ten (10) days of any change in this information.

B. Marquie shall timely renew his real estate license(s), timely pay all fees required for license renewal and shall comply with all other requirements necessary to maintain his license(s) in a current and active status. During the disciplinary period, Marquie shall not place his real estate license(s) on inactive status as would otherwise be allowed under 20 CSR 2250-4.040. Alternatively, without violating the terms and conditions of this Settlement Agreement, Marquie may surrender his real estate license(s) by submitting a letter to the MREC and complying with 20 CSR 2250-8.155. If Marquie applies for a real estate license after surrender, Marquie shall be required to requalify as if an original applicant and the MREC will not be precluded from basing its decision, wholly or partially, on the findings of fact, conclusions of law, and discipline set forth in this Settlement Agreement.

C. Marquie shall meet in person with the MREC or its representative at any such time or place as required by the MREC or its designee upon notification from the MREC or its designee. Said meetings will be at the MREC's discretion and may occur periodically during the probation period.

D. Marquie shall immediately submit documents showing compliance with the requirements of this Settlement Agreement to the MREC when requested by the MREC or its designee.

E. During the probationary period, Marquie shall accept and comply with unannounced visits from the MREC's representative to monitor compliance with the terms and conditions of this Settlement Agreement.

F. Marquie shall comply with all relevant provisions of Chapter 339, RSMo, as amended, all rules and regulations duly promulgated thereunder, all local, state, and federal laws. "State" as used herein includes the State of Missouri and all other states and territories of the United States. Any cause to discipline Marquie's license as a real estate broker under § 339.100.2, RSMo, as amended, that accrues during the disciplinary period shall also constitute a violation of this Settlement Agreement.

G. Marquie shall report to the MREC each occurrence of Marquie being finally adjudicated and found guilty, or entering a plea of guilty or nolo contendere, in a state or federal criminal prosecution, to felony or misdemeanor offenses, within ten business days of each such occurrence.

H. Broker Acknowledgement. If at any time during the disciplinary period Marquie wishes to transfer his license affiliation to a new broker/brokerage, he must submit a Broker Acknowledgment form signed by the new broker. This acknowledgement is in addition to any other required application, fee, and documentation necessary to transfer his license. Marquie must obtain the Broker Acknowledgment form from the MREC.

I. Quarterly Audit Reports. Marquie shall, at his own expense, ensure that quarterly audits of any trust or escrow accounts used by Marquie in conducting property management activities, including property management trust accounts and security deposit trust accounts, are conducted and completed by an independent certified public accountant ("CPA") approved by the MREC. Within 15 calendar days of the effective date of this Settlement Agreement, Marquie shall submit to the MREC in writing a list of at least three CPAs, including the CPA's name, address and relationship to Marquie. The MREC may approve one of the listed

CPAs or may require Marquie to submit additional names for consideration and approval. Marquie shall, at his own expense, retain an approved CPA to conduct and complete the quarterly audits. The quarterly audit for each account should contain a three-way reconciliation between the check register, the bank balance, and the owner balance(s). Such quarterly

audits shall begin with the ~~fourth~~ ^{second} quarter of ~~2015~~ ²⁰¹⁶, ending ~~December 31, 2015~~ ^{June 30, 2016}, and continue throughout the disciplinary period, ending with the ~~fourth~~ ^{second} quarter of ~~2020~~ ²⁰¹⁸, ending ~~June 30, 2020~~ ^{December 31, 2018}. Within 30 days of each

quarter's end date, Marquie shall cause the CPA who conducted the audit to mail to the MREC by certified mail, return receipt requested, a signed statement from the CPA confirming that the CPA completed the quarterly reconciliation of the escrow or trust account(s). All documents necessary to prove the reconciliation should be submitted with the CPA's statement. If the CPA should find that the three-way reconciliation does not match, the CPA report should include the detail and documentation necessary to show that all discrepancies were identified and corrected.

J. Marquie must successfully complete a continuing education course on property management with an emphasis on the handling of escrow and trust accounts, and provide proof of successful completion to the MREC within the first six months of the disciplinary period. The course

must be attended in an in-class setting and may not be taken via the internet. Marquie may not apply the education required by this Settlement Agreement to satisfy the continuing education hours required for license renewal.

30. Upon the expiration of the disciplinary period, the license of Marquie shall be fully restored if all requirements of law have been satisfied; provided, however, that in the event the MREC determines that Marquie has violated any term or condition of this Settlement Agreement, the MREC may, in its discretion, after an evidentiary hearing, vacate and set aside the discipline imposed herein and may suspend, revoke or otherwise lawfully discipline Marquie's license.

31. No additional discipline shall be imposed by the MREC pursuant to the preceding paragraph of this Settlement Agreement without notice and opportunity for hearing before the MREC as a contested case in accordance with the provisions of Chapter 536, RSMo.

32. This Settlement Agreement does not bind the MREC or restrict the remedies available to it concerning any future violations by Marquie of §§ 339.010-339.205 and §§ 339.710-339.855, RSMo, as amended, or the regulations promulgated thereunder, or of the terms and conditions of this Settlement Agreement.

33. This Settlement Agreement does not bind the MREC or restrict the remedies available to it concerning facts or conduct not specifically mentioned in this Settlement Agreement that are either now known to the MREC or may be discovered.

34. If any alleged violation of this Settlement Agreement occurred during the disciplinary period, the parties agree that the MREC may choose to conduct a hearing before it either during the disciplinary period, or as soon thereafter as a hearing can be held, to determine whether a violation occurred and, if so, may impose further disciplinary action. Marquie agrees and stipulates that the MREC has continuing jurisdiction to hold a hearing to determine if a violation of this Settlement Agreement has occurred.

35. Each party agrees to pay all their own fees and expenses incurred as a result of this case, its litigation, and/or its settlement.

36. The terms of this Settlement Agreement are contractual, legally enforceable, and binding, not merely recital. Except as otherwise contained herein, neither this Settlement Agreement nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

37. The parties to this Settlement Agreement understand that the MREC will maintain this Settlement Agreement as an open record of the MREC as required by Chapters 324, 339, and 610, RSMo, as amended.

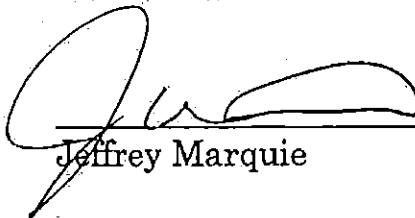
38. Marquie, together with his partners, heirs, assigns, agents, employees, representatives and attorneys, does hereby waive, release, acquit and forever discharge the MREC, its respective members, employees, agents and attorneys including former members, employees, agents and attorneys, of, or from any liability, claim, actions, causes of action, fees, costs, expenses and compensation, including, but not limited to, any claim for attorney's fees and expenses, whether or not now known or contemplated, including, but not limited to, any claims pursuant to § 536.087, RSMo, as amended, or any claim arising under 42 U.S.C. § 1983, which now or in the future may be based upon, arise out of, or relate to any of the matters raised in this case or its litigation or from the negotiation or execution of this Settlement Agreement. The parties acknowledge that this paragraph is severable from the remaining portions of the Settlement Agreement in that it survives in perpetuity even in the event that any court or administrative tribunal deems this agreement or any portion thereof void or unenforceable.

39. Marquie understands that he may, either at the time the Settlement Agreement is signed by all parties, or within fifteen days thereafter, submit the

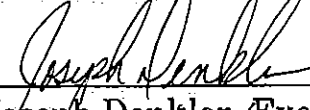
Hearing Commission to review this Settlement Agreement, Marquie may submit his request to: Administrative Hearing Commission, Truman State Office Building, Room 640, 301 W. High Street, P.O. Box 1557, Jefferson City, Missouri 65102.

40. If Marquie requests review, this Settlement Agreement shall become effective on the date the Administrative Hearing Commission issues its order finding that the Settlement Agreement sets forth cause for disciplining Marquie's license. If the Administrative Hearing Commission issues an order stating that the Settlement Agreement does not set forth cause for discipline, then the MREC may proceed to seek discipline against Marquie as allowed by law. If Marquie does not request review by the Administrative Hearing Commission, the Settlement Agreement goes into effect 15 days after the document is signed by the Executive Director of the MREC.

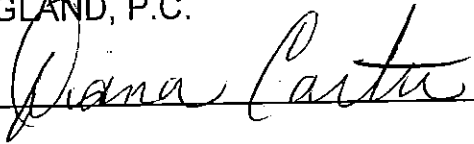
LICENSEE

 2/19/16
Jeffrey Marquie Date

MISSOURI REAL ESTATE
COMMISSION


Joseph Denkler, Executive Director
Date: 3/30/16

BRYDON, SWEARENGEN &
ENGLAND, P.C.

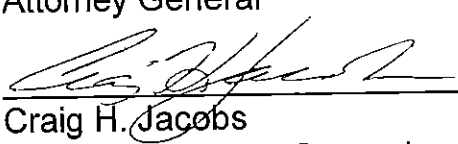


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